



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR.	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/176,634	10/22/1998	MORDECHAI TURI	JWB-98-9-P	2106

7590 04/11/2002

JAMES W BADIE
STOLL MISKIN PREVITO HOFFMAN & BADIE
EMPIRE STATE BUILDING
350 FIFTH AVE SUITE 6110
NEW YORK, NY 10118

EXAMINER

KIDWELL, MICHELLE M

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 04/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/176,634

Applicant(s)

TURI ET AL.

Examiner

Michele Kidwell

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Objections

Claim 25 is objected to because of the following informalities: the word "have" should be replaced with "having" in line 8. Appropriate correction is required.

Claim 26 is objected to because of the following informalities: the word "have" should be replaced with "having" in line 8. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 17 – 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 17 recites the limitation "the waist" in line 10. There is insufficient antecedent basis for this limitation in the claim.

Additionally, with respect to claim 17, the language of the claim is unclear. It is not clear whether the applicant intends to claim that the elasticized barrier layer is defined by three sides which include a longitudinal side, a lateral side and a diagonal side or if the elasticized barrier layer is defined by three sides in addition to a longitudinal side, a lateral side and a diagonal side. Further, it is not clear what the applicant intends to claim when stating an elasticized diagonal side since the entire

Art Unit: 3761

barrier layer, which is comprised of the diagonal side, has already been defined as elasticized.

Even further, claim 17 refers to "the end" in line 20. It is not clear what "end" the applicant is referring to and the "end" of what is being connected.

Claim 18 recites the limitation "the middle" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 19 recites the limitation "the middle" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 20 recites the limitation "the middle" in lines 2 – 3 and "the middle" in line 4. There is insufficient antecedent basis for these limitations in the claim.

Claim 21 recites the following limitations:

- "the waist" in line 10
- "the first longitudinal side of the absorbent core member" in line 18
- "said lateral side of said absorbent core member" in lines 20 – 21

There is insufficient antecedent basis for these limitations in the claim.

Additionally, with respect to claim 21, the applicant has claimed first and second portions of the top surface of the absorbent core. The applicant has failed to provide support for these portions in the original disclosure and it is unclear what defines these portions. The applicant also claims "said first longitudinal side" in line 19. Is this the first longitudinal side of the first elasticized barrier layer or is this the first longitudinal side of the absorbent core member?

Further, the language of the claim is unclear. It is not clear whether the applicant intends to claim that the first and second elasticized barrier layers are defined by three sides which include a longitudinal side, a lateral side and a diagonal side or if the first and second elasticized barrier layers are defined by three sides in addition to a longitudinal side, a lateral side and a diagonal side. Further, it is not clear what the applicant intends to claim when stating an elasticized diagonal side since the entire barrier layer, which is comprised of the diagonal side, has already been defined as elasticized.

Even further, the applicant has claimed that the absorbent core member comprises "distal lateral sides", but the applicant claims that the a first lateral side of the first and second elasticized barrier layers is attached to a lateral side of the absorbent core member. The applicant has not clearly defined the claimed invention.

Claim 21 recites the following limitations:

- "the waist" in line 10
- "the middle and distal end" in line 14
- "the middle and distal end of the other one" in lines 15 – 16
- "the middle and proximal end" in lines 18 – 19
- "the other end" in line 19
- "the middle and distal end of the other one" in line 20

There is insufficient antecedent basis for these limitations in the claim.

Additionally, with respect to claim 25, the applicant has claimed portions of the top surface of the absorbent core. The applicant has failed to provide support for these portions in the original disclosure and it is unclear what defines these portions. The applicant also claims "said first longitudinal side" in line 19. Is this the first longitudinal side of the first elasticized barrier layer or is this the first longitudinal side of the absorbent core member?

Further, the language of the claim is unclear. It is not clear whether the applicant intends to claim that two arched-shaped elasticized barrier layers being defined by a first and second generally concave elasticized barrier or two arched-shaped elasticized barrier layers in addition to a first and second generally concave elasticized barrier. Further, it is not clear what the applicant intends to claim as an invention when stating a concave elasticized barrier the two arch-shaped barrier layers, which is comprised of the first and second elasticized barrier, has already been defined as elasticized.

Even further, it is unclear what the barrier layer is attached to. The applicant states "...having one end attached between the middle and the distal end of one of said longitudinal sides and second end attached between the middle and distal end of the other one of said longitudinal side.." It is unclear what the applicant intends to claim as an invention.

Lastly, the applicant has disclosed "longitudinal sides", but claims "said longitudinal side". The applicant has not clearly defined the claimed invention.

Claim 26 recites the following limitations:

- "the waist" in line 10
- "the left longitudinal side of said absorbent core member" in line 21
- "the top lateral side of said absorbent core member" in line 24
- "the middle and proximal end" in lines 18 – 19
- "the other end" in line 19
- "the middle and distal end of the other one" in line 20

There is insufficient antecedent basis for these limitations in the claim.

It is unclear what left longitudinal side the applicant is referring to in line 21. The structure as claimed is considered to be vague and indefinite due to the fact that the applicant uses the same terms (i.e., left longitudinal side, and top lateral side) to refer to different elements. While the rejections may specifically refer to the first elasticized barrier layer, the same rejections hold true for the second, third and fourth elasticized barrier layers.

Additionally, with respect to claim 26, the applicant has claimed portions of the top surface of the absorbent core. The applicant has failed to provide support for these portions in the original disclosure and it is unclear what defines these portions. The applicant also claims "said first longitudinal side" in line 19. Is this the first longitudinal side of the first elasticized barrier layer or is this the first longitudinal side of the absorbent core member?

Further, the language of the claim is unclear. It is not clear whether the applicant intends to claim that the elasticized barrier layers are defined by three sides which include a left longitudinal side, a top lateral side and a first diagonal side or if the elasticized barrier layers are defined by three sides in addition to a longitudinal side, a lateral side and a diagonal side. Further, it is not clear what the applicant intends to claim when stating an elasticized diagonal side since the entire barrier layer, which is comprised of the diagonal side, has already been defined as elasticized.

With reference to claim 27, the claim dependency is improper. The applicant has claimed the article according to the same claim. It is unclear what claim this claim depends from. Accordingly, no prior art has been applied to this claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17 – 26, as best understood by the examiner, are rejected under 35 U.S.C. 103(a) as being unpatentable over Ternstrom et al. (US 4,897,084).

With reference to claim 17, Ternstrom et al. (hereinafter "Ternstrom") discloses an integral disposable elasticized absorbent article comprising an absorbent body having a front waist portion, a back waist portion, a crotch portion and a pair of spaced apart leg openings (figures 1 – 3), an absorbent core member having a longitudinal axis

and a horizontal axis defined by opposed spaced apart longitudinal sides each having a proximal end and a distal end and opposed spaced apart proximal and distal lateral sides, and having a top surface and an opposed bottom surface (1) and an elasticized barrier layer (3) overlying a portion of the top surface of the absorbent core member, said elasticized barrier layer being defined by three sides, a longitudinal side attached along a portion of one longitudinal side of said absorbent core member and having a terminal end on said longitudinal side, a lateral side attached along a portion of one lateral side of said absorbent core member and having a terminal end on said lateral side, and an elasticized diagonal side connected the end on said longitudinal side to the end on said lateral side thereby forming a retaining enclosure between said elasticized barrier layer and said top surface of said absorbent core member as set forth in col. 4, lines 1 – 24 and figure 1.

The difference between Ternstrom and claim 17 is the provision that the article comprise a means for fastening the absorbent body around the waist of the wearer.

It would have been obvious to one of ordinary skill in the art to modify the absorbent body of Ternstrom to employ a means for fastening the absorbent body around the waist of the wearer because Ternstrom discloses that the article may be used with disposable absorbent articles which is known in the art to include diapers. Diapers are also known in the art to include fastening means about the waist of the article to secure the article to the wearer thereby improving the fit of the article and preventing side leakage.

Regarding claims 18 – 20 and 22 – 24, see figure 1.

As to claims 21 and 25 – 26, see the rejection of claim 17 and figure 1.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

Art Unit: 3761

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 703-308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Michele Kidwell

Michele Kidwell
April 8, 2002

Kim M. Lewis
KIM M. LEWIS
PRIMARY EXAMINER
AU 3761